

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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BUREAU OF CONVEYANCES
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**OAHU ISLAND BURIAL COUNCIL MEETING
MINUTES**

DATE: WEDNESDAY, SEPTEMBER 14, 2005
TIME: 2:00 P.M.
PLACE: DEPARTMENT OF LAND & NATURAL RESOURCES
1151 PUNCHBOWL STREET, ROOM 132
HONOLULU, HAWAII 96813

ATTENDANCE:

Members: Chuck Ehrhorn
Alice Greenwood
Analu Josephides
Andrew Keliikoa
Sydney Keliipuleole
Kalei Kini
Kehaulani Kruse
Aaron Mahi
Mark Kawika McKeague
Linda Kaleo Paik

Absent: Cy Bridges (excused)
Van Horn Diamond (excused)
Jace McQuivey (excused)
Nettie Tiffany (excused)

Staff: Melanie Chinen, Administrator
Sunny Greer, Administrative Assistant
Vince Kanemoto, Deputy Attorney General
Susan Yanos, Secretary

Guests: Alani Apio
David Brown
Dawn Chang

Piilani Chang
Paulette Kaleikini
Gordon Pang
David W. Shideler
Kawehi Yim

I. CALL TO ORDER & ROLL CALL

Since Chair Diamond could not be present at today's meeting, Vice-chair Ehrhorn and all members agreed to call meeting to order at 2:03 pm.

A motion was made to elect Vice-Chair Ehrhorn to be the Chair for today's meeting. (Kruse/ Keliikoa)

VOTE: ALL IN FAVOR.

Yanos did a visual roll call. Josephides opened the meeting with a *pule*.

II. INTRODUCTION OF COUNCILMEMBERS AND SHPD STAFF

Ehrhorn announced that the council will take a short break after 2 hours to take care of the parking meters if anyone needs to. Councilmembers and SHPD staff introduced themselves. Administrator Chinen introduced Susan Yanos, secretary, who will be taking minutes for the Oahu IBC. Present at today's meeting was David Brown, who will be the new Archaeology Branch Chief, and Piilani Chang, who will be the new Oahu Cultural Historian.

III. OPENING REMARKS

No opening remarks were made by Ehrhorn.

IV. ESTABLISHING A COUNCIL POLICY REGARDING THE REASONABLE ADMINISTRATION OF ORAL TESTIMONY, INCLUDING TIME LIMITS ON ORAL TESTIMONY

Ehrhorn said that he and Diamond discussed the possibility of establishing a Council policy regarding the reasonable administration of oral testimony including time limits on oral testimony. A lot of people in the past have come before the Council and have taken a lot of time on their testimony. Ehrhorn said that Diamond's idea was to implement a 3-minute time limit and at the discretion of the Chair extend it for one or more minutes depending upon the testimony.

Paik asked if the Councilmembers are going to receive material in advance so that it could be reviewed before the meeting. If no materials were to be distributed beforehand, Paik felt she would not be able to make an informed decision listening to someone for two or three minutes—that amount of time would be too short – but understands if the person is being redundant then that can be the purview of the Chair to ask the testifier to continue with the new information.

Kanemoto explained that Council meetings are governed by the “Sunshine Law”. Therefore anyone who wants to testify can do so; but without adopting a time limitation policy on testimony, Council cannot impose a time limit on testifiers. Kanemoto also noted that the time limit would be per agenda item (not for the whole meeting), and he suggested three minutes subject to extension at the Chair’s discretion.

Kruse commented that, culturally, especially when kupuna speak, you have to allow people to talk. She felt that it could be at the discretion of the Chair to draw them back to the agenda.

Chinen reminded the Council that during the IBC training session, this issue was brought up by Les Kondo, Director of OIP, as a good policy to have, because without the policy, to cut people off as they are talking would be a violation of the “Sunshine Law”. The intent of the policy is to protect the Council and allow it to be able to conduct business in a timeframe.

Greer shared that the same concern that this Council has was also discussed at Kauai, Maui, and Hawaii Island. Those Councils adopted a 3-minute oral testimony policy, which could be extended at the discretion of the Councilmembers—they did not limit the discretion to the Chair. Greer also shared that the Oahu IBC did have a past complaint reported to the OIP because they did not afford a member of the public the opportunity to present oral testimony.

***A motion was made to give speakers 4 minutes to speak subject to a two-minute extension to wrap up subject to Council's concurrence.
(Josephides/McKeague)***

Kanemoto asked the Council to clarify the motion. He suggested that the extension be revised to "subject to extension by the Council as determined by the Chair", leaving it open ended. Ehrhorn asked Josephides if it was ok to revise his motion; Josephides agreed.

***Revised motion was made to give speakers 4 minutes to speak subject to extension by the Council as determined by the Chair.
(Josephides/McKeague)***

VOTE: NINE VOTES IN FAVOR; PAIK ABSTENDED.

V. APPROVAL OF FEBRUARY 9, 2005 MEETING MINUTES

A motion was made to accept the minutes of the February 9, 2005 open meeting as presented. (Paik/Mahi).

VOTE: ALL IN FAVOR

A motion was made to accept the confidential minutes of the February 9, 2005 closed meeting, as presented. (Paik/Josephides)

VOTE: ALL IN FAVOR

VI. INFORMATIONAL BRIEFINGS

A. Waikiki Beach Walk Project – Kuiwalu

Dawn Chang, on behalf of Outrigger Enterprises, Inc., came to update the Council on the Waikiki Beach Walk Project and to brief the Council on the discovery of human remains that were found on the site.

Chang reminded the Council that Outrigger is doing a major project of eight acres. There were some changes in the construction schedule, they are now just demolishing and then building up.

Demolition started in June, with pilings in July. They are now doing construction activities, which primarily involves demolition, removal and then building up.

There have been two archaeological plans that have been approved by SHPD: the monitoring plan and the inventory survey. Kuiwalu has been brought on to this project as cultural consultants. Their approach is to engage in proactive early consultants with potential families, lineal and cultural descendants, and interested native Hawaiian organizations. In December 2004, Kuiwalu did a publication notice asking any interested families that may have a potential claim to the Waikiki area to come forward. Kuiwalu also consulted with SHPD and got the list of recognized descendants for the various Waikiki projects (Keeaumoku to Kalakaua).

Since the month of May, Kuiwalu has convened informational meetings. There were no declaration or recognition of descendency because at that

point in time no burials had been found. What Kuiwalu was doing was meeting with the families and getting their suggestions on what they'd like to do if burials were found at the project.

Invitations went out to about 75 individuals and families to participate in this process. Kuiwalu met with the families in May, June, and July. At these meetings, notifications, temporary curation, and permanent disposition were discussed. The topic for a meeting to take place on September 14 will be cultural monitoring. The families have come up with recommendations.

On September 7, 2005, an archaeological monitor was on site during construction activities and a burial was found. All work stopped in the immediate area, and fencing was put up. Calls were made to SHPD, OIBC Kona representatives (Diamond and Kruse), Office of Hawaiian Affairs (Kai Markell), and the Honolulu Police Department. Since the families had asked that all families who had been participating in Kuiwalu's process be notified, Kuiwalu contacted the Keohokalole, Kaleikini, G. Kealoha Kuhea, Nalani Olds families; Van was also informed as a Waikiki descendant.

A site visit was done on September 8, 2005. The remains were in a shallow pit. The preliminary indications of the principal archaeologist, Tom Dye, were that this was probably a secondary find – it had previously been disturbed probably during the early construction of the area. Consequently, what someone did—someone who had some sensitivity—they took care of the iwi and put them in this very shallow pit. It consisted of a mandible, some ribs, and one long bone. The bones were kept in the pit until families and SHPD came out to the site. Chang commended Chinen and Greer for their timely response. The initial determination was that the burial would be treated as previously identified to permit on-going consultation. When Chinen came out on the site and her determination based upon the condition of the iwi, there was a confirmation that the bones were human and probably over 50 years old. Ethnicity was undeterminable; but there was no contrary evidence that they were not Hawaiian. The iwi was found at the corner of Lewers and Kalia where there are major utility lines. Based on the interpretation of the statute, this is really an inadvertent discovery.

Outrigger would like to continue to engage in consultations with OIBC and the families. Outrigger is interested in keeping the families informed as well as consulting with them and getting their recommendations, likewise with OIBC.

Consequently, authorization was given by SHPD to remove the iwi because it was not in a good place. On the next day (September 9), Diamond and Kruse went out to the site. Kruse helped to malama the iwi—washed it and wrapped it in muslin and put it in a lauhala basket. Outrigger has set aside a

room in the Islander Hotel for temporary on-site curation. Kuiwalu will talk to the families about protocols regarding access. Outrigger wants to provide the families access. Kuiwalu is agreeing to ongoing consultation to discuss the permanent location of where this iwi is going to be reinterred. No decision has been made on that yet.

(Josephides left at 2:40 pm.)

(Tape 1, Side B)

Diamond and Paulette Kaleikini have been attending Kuiwalu's consultation meetings and also visited the site.

McKeague shared that the company that he works for, Group 70 International, did the environmental impact statement for Outrigger. Although McKeague is no longer directly involved with the project, he and Dawn has been corresponding indirectly via McKeague's project manager about how iwi kupuna issues are handled within the urban core of Honolulu. He commends Kuiwalu and Outrigger for their proactive approach to help make these decisions.

Chinen said that the Outrigger project is an unusual case. There was some confusion earlier in the project when SHPD was asked by someone who had been recognized in the past as a cultural descendant to a burial somewhere else whether or not they were descendants to the Outrigger project. At that time, there were no burials, so technically when the term "descendants" is being used, it's being used very loosely here. There are no recognized descendants to this specific burial. The people that Outrigger has been consulting with are people who have been recognized for that ahupuaa. SHPD has told some of the families who have called the office if they want to be recognized to this specific burial the process should be a lot smoother and easier for them because it had gone that route in the past for cultural descendancy. In this particular project, there is no ethnicity determination. This put SHPD in an odd position, because the office wants to encourage that type of activity where developers are up front trying to work with families in the event that iwi are discovered. However, there is a caution that the office needs to approach because in the event that ethnicity is not determined, it may not be a certain group that actually would be the ones to make the recommendation. What SHPD was able to do is hear the recommendations that did come from the native Hawaiian community. Because these particular burials were at risk of harm and were subject to being disturbed again in the future, SHPD's determination was easy and consistent with those who had been consulted. But there was a possibility that SHPD's determination may have been different. Therefore, we need to sometimes look broader as to who are the descendants and who has a say

in what should be considered in the process. In the event that we cannot make an ethnicity determination, SHPD would welcome native Hawaiians as well as others that may want to come forward. It's not limited at this point to the native Hawaiian community.

Chang said that she felt that Chinen responded appropriately according to what the law requires. However, what the culture requires, Kuiwalu will try to continue in those consultations which may be wider than the native Hawaiian community. Chang stated that their publication notice was addressed to anybody, but the participation have generally been by the native Hawaiian families that have been recognized.

Greenwood asked if there was research previously done for the project since the project is on a known site with a TMK and there is now a finding on that site. Chang replied that initially the environmental documents that were done for this project, the archaeological documents were related to this TMK. However, because Waikiki is a very broad area and from a cultural perspective, some people may have lived beyond Kalia/Lewers. While the initial research was limited to that TMK, their consultation has been much broader than that.

Chinen added that there was a requirement from SHPD that certain areas have an inventory survey done that have not been surveyed in the past. For other areas, there was to be monitoring. So this is a case where what the department had required was monitoring. Chinen rephrased Greenwood's question to, "How come you didn't identify the probability or do some testing earlier?" To date the inventory survey for this project has not been done, but this is a separate area.

Kanemoto and Chinen explained that 1) there's no determination that these are native Hawaiian remains; and 2) the burial was also inadvertent. Chinen admitted to an error in which she signed a letter on April 18 that allowed all of the burials to be treated as previously identified so it would come to the Burial Council. Chinen does not know the history behind what the SHPD staff had been informed of negotiations that had occurred that the families wanted it to come to the Council. When this burial came up, Greer was told by Mr. Dye that the burial was previously identified and it's supposed to go to the Council. Upon review of the laws as to what is truly "previously identified", it relates to burials found during inventory survey or data recovery. This did not fit the case, so Chinen apologized to Outrigger and Chang and said that SHPD does not have the authority to deem the burial as "previously identified" when it does not fit into that definition. So Chinen sent a letter to retract the earlier correspondence. By law, it was an inadvertent so it needed to be treated appropriately. SHPD's determination needed to come within 24 hours. In this case, Chang said that Outrigger is willing to

give it a broader window of time so that Burial Councilmembers can be contacted. Because Outrigger had already done some preliminary advertising upfront to let people know this project is going on and is meeting regularly with these groups, SHPD did take into consideration the recommendations as well as that of the on-site archaeologist. Chinen wanted to clarify that when SHPD goes out on burial calls, they are not making decisions in archaeology. The new archaeologist or the paid consultant on site confirms if it is a human burial and 50 years or older. This burial is under SHPD's jurisdiction. The question that was asked of the archaeologist was, "Is this burial's ethnicity something you can determine?" and we were told "No".

Guest Paulette Kaleikini asked if it couldn't be determined that it was native Hawaiian? Or did SHPD decide to move it and assume that it wasn't native Hawaiian.

Chinen clarified that the decision to move the remains was based on what was in the statute? This burial was in imminent harm. That was the concern: the cultural inappropriateness of iwi being located adjacent to a major utility line and because the burial was quite shallow. The decision to move the burial was not based on ethnicity. Chinen explained that whether a burial was traditional Japanese, native Hawaiian or other ethnicity, SHPD will always go back to the law in deciding whether or not the burial should be moved. The importance of ethnicity is that it allows the office to know with whom to consult.

Kaleikini asked if SHPD had the authority to change the determination of a burial from previously identified to inadvertent. During their meetings with Kuiwalu, the descendants were told that the remains were going to be treated as previously identified, and the families accepted that. But now the families are going to find out that the determination was changed without the families being notified.

Chang explained to Kaleikini that there had been previous understandings between SHPD and Outrigger that in abundance of caution and wanting to consult with the families, any burials would be considered previously identified. However, the burial was not found during an archaeological inventory survey, it was actually found during construction with an archaeological monitor on site. Kuiwalu represented to the families and OIBC that the burials would be previously identified. However, once Chinen came on site, saw the condition of the burial and the context in which it was found, a determination was made by SHPD that they were going to be inadvertent because that is what the law reads.

Kanemoto explained that it was a factual determination that governs whether the burial was previously identified or inadvertent. Under the law it can be previously identified if certain facts exist. If not, then the burials are automatically inadvertent.

Ehrhorn asked for clarification. He said that Chang earlier stated that "they" would be considered inadvertent. Ehrhorn asked if other burials that may be found from now on would be considered inadvertent? Chang said that their previous understanding was that any burials found at the site would be considered previously identified. However, future burials would be determined on a case-by-case basis. Chinen added that it would depend on monitoring or if they actually do survey work. Chang added that they will be doing some archaeological inventory survey. Where they are going to lay the utilities, they're going to survey the area first. If any burials are found in the context of the survey, they will be considered previously identified. However, if burials are found in the context of construction and monitoring, they will be considered inadvertent.

B. Punaluu Iwi Kupuna Issue – BWS

Alani Apio from the Board of Water Supply came to update the Council on their projects.

At the Punaluu iwi kupuna, 64 sets of iwi kupuna were all determined inadvertent discoveries. The remains are in temporary curation at Punaluu with SHPD's approval, and Ahi Logan, a recognized descendant and whom all the other recognized descendants agreed to be kahu for the time being.

Apio stated that there has been a desire by the vast majority of the descendants (everyone except two or three descendants of about 40+) to get the iwi kupuna reinterred at Hanawao Heiau, which is at the end of Woodward Lane, about a block south of Punaluu Beach Park. The land is 1) owned by the Kamehameha Schools; and 2) listed on the State's Historic Register.

The Board of Water Supply has worked with SHPD and the majority of the descendants to take a look at the use of that heiau as a potential reinterment site. An agreement was reached subject to several SHPD and Kamehameha Schools stipulations. Currently, BWS is ready to sign an MOA with Kamehameha Schools that will allow BWS to enter their property to survey the land and to create a design for the reinterment structure. Apio noted that the majority of the descendants acknowledged that this process would take a long time – from six months to a year – to get through SHPD, Kamehameha Schools, and the BWS.

After the structure has been designed, BWS will then create a burial treatment plan and present it to the Kamehameha Schools and SHPD for approvals. BWS will share the plan with the descendants for their comments and the understanding is that as long as the majority of the descendants agree on it, the plan will be followed through.

Kanemoto stated that although these matters are being brought to the Council for informational purposes today, in the future the Council will need to make recommendations on the burial treatment plans. He pointed out that one of the Councilmembers (Andrew Keliikoa) is an employee of the Board of Water Supply. Kanemoto advised that that Council member recuse himself from sitting in on BWS matters. Kanemoto stated that the Keliikoa could sit in on the meeting as a general member of the public, not participate in any discussion.

Greer interjected that the Punaluu burials are inadvertents. According to SHPD rules under 13-340 for inadvertent discovery of remains, SHPD need to only consult with councilmembers representing the geographic region and not come before the entire Council for disposition. Kanemoto stated that it would come before the Council when they make their recommendations on the burial treatment plan. Greer stated that a burial treatment plan is not required for inadvertent burials. In the past, the Department has required burial treatment plans for inadvertent burials. However, the rules read, burial treatment plans are required for previously identified burials. In this case of an inadvertent where relocation is proposed, what is required is a burial component of an archaeological data recovery plan. Greer stated that the archaeological data recovery plan will go before the councilmembers representing the geographic region, and in Koolauloa, that would be McQuivey and Bridges.

C. Kamehameha Heights Water System Improvements, Part 2 – BWS

This is a water main replacement project. When BWS looked at this project, they recognized that it is on the borderline of two cemeteries – Puea and Kaahumanu. In an abundance of caution, BWS decided to test the areas along Kapalama Avenue (directly where the waterlines are going to be placed) for the presence of burials that may exist outside of the present-day cemetery boundaries.

Apio stated that he consulted with the Kaahumanu cemetery caretaker, and the cemetery assured BWS that they are absolutely sure of the boundaries of their cemetery. On Alani Street, there are no burials that go outside of their bounds and that are within their property lines. Therefore, BWS will not test on Alani Street. They will only be testing from the corner of North School Street up to Alani Street on Kapalama Avenue.

Apio concluded by saying that if burials are found, BWS will consult with SHPD. BWS is prepared to look at re-engineering the lines if it is determined that the burials remain in place.

Kanemoto requested to go into executive session to clarify an issue. A motion was made to go into executive session to discuss the Board's liabilities, immunities, and privileges with its attorney pursuant to HRS §92-5. (Keliipuleole/Mahi)

VOTE: ALL IN FAVOR.

Council went into Executive Session at 3:25 p.m.

(EXECUTIVE SESSION – MINUTES NOT FOR PUBLIC DISTRIBUTION)

A motion was made to come out of Executive Session. (Kruse/Mahi)

VOTE: ALL IN FAVOR.

Council came out of Executive Session and resumed the public meeting at 3:27 p.m.

(Paik left at 3:35 p.m.)

D. North Kalaheo Avenue Water System Improvements – BWS

Apio stated that the water lines in North Kalaheo Avenue need to be replaced. Initially, this project was not on BWS' schedule. However, the residents have been dealing with dealing with it for several years now. If BWS were to let the sewer line be finished and come back after a year-and-a-half ask that community to once again pull up its roads, that would not be a good thing. So BWS coordinated with the City to replace the water main in the same time frame as the sewer line.

BWS is waiting for the contractor to get their equipment and schedules in place. This project is ready to begin construction. Cultural Surveys Hawaii is doing the monitoring for both the sewer and water line projects. BWS is taking on the *kuleana* of being proactive on this project. BWS is working with the City to help them should they come across any finds on the sewer project, BWS will help the City with issues as another consulting agency. The staff on the sewer project do not have a lot of experience with iwi kupuna issues, so BWS volunteered to help them should any remains are found.

An archaeological plan is in place for this project. BWS has begun building a cultural consultant program for this ahupuaa (Kailua). As some of the older

burial Councilmembers know, BWS built their cultural consultant programs for the ahupuaa in Waianae, Waikiki, and Punaluu. BWS has contacted a number of old-time Kailua families to see if they are interested in taking this on as a kuleana. The families are interested; and later on in September, BWS will be meeting with them. Primarily, this is to get consultation on, should a burial be found, what are the cultural protocols they would like to see enacted that are above and beyond the scope of the law as it exists.

BWS is consulting with the City and SHPD on the possibility of designating Kalama Beach Park as a reinterment site if and should reinterment be necessary. This is not to anticipate the moving of a burial. There is an anticipation that there may be finds on this project in the tens because of the history of the area and the history of the finds in the area. BWS may be looking at multiple inadvertents in areas where the BWS has a small narrow corridor that they will probably not be able to re-engineer the lines. BWS does not want iwi kupuna disinterred for any longer than necessary, so if it's possible to identify a potential reinterment site, should that determination be made, why not do it now?

BWS will run a proactive burial ad for this and other projects in this area, soliciting for any descendants of the area.

Ehrhorn asked if the Sewer (Wastewater) Department have come across any remains. Apio said to his knowledge, there have been three and Kalei Kini has been working with the Wastewater Department. Kini confirmed that there were several finds but he was not sure exactly how many; but in one of them, Kai Markell said that it was reburied in place. Kini added that he was not sure whether there were other finds and if they are in the possession of SHPD.

Ehrhorn stated the reason he asked was because he doesn't recall the sewer projects coming before the Council before. Kini said there were several inadvertents which were handled by Kai and the Council was briefed, but it might have been before Ehrhorn became a Council member.

E. Makau Street – BWS

BWS has been working out at Waianae since 2001. Apio directed the Council to Project 13 on the map that he distributed—the Makau Street project. In 2003, BWS did a proactive burial ad on all of the BWS projects. There were no burials identified by anyone to this date to the corridor of their project, so BWS was given the go-ahead by SHPD for these projects. There is an archaeological monitoring plan in place. BWS has worked with the Makaha Ahupuaa Community Association. The Association has identified Eric Enos as someone they want to have as their cultural advisor/consultant.

BWS has worked with him to find out anything that needs to be done above and beyond the scope of the laws. On this project, BWS will work closely with SHPD because the archaeological monitoring plan says essentially that it is an upraised coral reef and the potential finds is very low. However, there was a find in the vicinity that eroded out from the sand right on the shoreline. So obviously there are burials in the area, however, it is complete—upraised coral, there's not going to be an opportunity to re-engineer the lines. BWS will work closely with SHPD and the archaeological monitoring company. BWS will have on-site monitoring if and only until SHPD gives approval to go on call based on the geography of land.

(Tape 2, Side A)

VII. SHPD INADVERTENT DISCOVERY REPORT

Note: Since Chinen and Greer had stepped out of the meeting, Ehrhorn took it upon himself to move up Agenda Item VII-H and VIII-B.

Michael Tice Property [587 N. Kalaheo Avenue]

New Archaeology Branch Chief David Brown briefed the Council on this project. There was an inadvertent discovery on this private residence. The contractor for this project was excavating a pool in the backyard and there were two tibia found. The contractor immediately notified SHPD; former SHPD employee Mary Carney went to the site. Carney suggested that the owner get a cultural resource firm to go out and conduct an archaeological monitoring for the duration of the excavations. Garcia and Associates was their representatives and went to the site to collect the remains, did a exhumation ceremony with ti leaves and muslin cloth. The following day, the construction crew continued to excavate the pool, and no further remains were discovered. The remains that were discovered have been returned to the homeowner and were reinterred on the property with the aid of a kahuna.

Greer and Chinen returned to the meeting. Chinen stated that starting next month, SHPD will give the Councilmembers a monthly report of all the inadvertent discoveries.

Teruya Brothers, Ltd. [TMK: (1) 8-5-11: 20]

This project was an older inadvertent that came up. The Department received an inquiry from the landowner, Teruya Brothers. There were plans to build a Jack-in-the-Box on this site. The Department is being asked whether or not the determination in recognizing certain people as lineal descendents was proper. What SHPD has told the individual is that issue needs to be taken to Chair's level because SHPD has to work with what they have and there is a lineal claim.

Chinen shared that initially she had been told, when she discussed this with the AG's Office, that the prior SHPD administrator had made a promise to revisit the issue because the landowner had not been consulted during the decision-making process to keep in place. With the advice of SHPD's attorneys, Chinen drafted a letter to the landowner indicating SHPD is willing to revisit the issue. The landowner indicated to Chinen that they would not want to have any of the descendants involved in the discussions. Chinen made it clear to the landowner that whether or not someone is lineal or cultural, the Department is going to seek the descendants' manao. Chinen explained to the landowner that those families would still be a cultural descendant and SHPD would listen to their concerns as well as the landowner's. Currently, everything's on hold for this project and the kupuna remains preserved in place.

Tusitala Vista Elderly Apartments [TMK: (1) 2-6-024: 070, 070]

There was a small bone fragment found on site in the Waikiki area. This is one of the changes that has been coming up with the new change of leadership in the Department. Chinen explained that in the past, if remains were found and they could not determine ethnicity, they would defer and say probably native Hawaiian because a lot of burials that we find are native Hawaiian. What SHPD did, in working with the contractors and archaeologists (Mary Carney was on staff at the time), was revisit the issue. In this case the determination was non-native Hawaiian because so limited fragments were found at this project site and the bones will need to be reinterred on-site. The remains were found in fill material, so it was imported. SHPD will have to negotiate reinterment; the remains are curated in SHPD office.

Pier 21, Ward Center [TMK: (1) 2-3-05:06]

On January 24, construction and renovation began at Ward Center and they came across the remains of one adult individual. Nathan Napoka, History and Cultural Branch Chief, with Mary Carney went to the site and secured about 70 percent of this single individual and they're now temporarily curated at SHPD downtown office. Negotiations are on-going to reinter these remains as well.

Watermark Project Site [TMK: (1) 2-011:001, 002, 004, 032, 037, 040]

This project is now called the Ala Wai Gateway. A coffin, human remains and associated burial goods were found on this site. Greer went to the site when they were being disinterred. There were actually two individuals in the coffin—one on top of the other. The remains are temporarily curated on site and the landowners have agreed to reinter on site.

Chinen added that when this project first came to SHPD, the report that was submitted said, ". . . ethnicity undeterminable, probable native Hawaiian".

Chinen shared that she was told in the past that the reports were written that way because people believed that's what SHPD wanted to hear. Chinen stated that she would like to hear the archaeologists' professional judgments. If it's non-native Hawaiian, SHPD will handle it as such. If it's native Hawaiian and found during survey work, we will send it to the Council.

Ehrhorn asked if the remains were determined to be native Hawaiian. Chinen replied that ethnicity could not be determined. Chinen added that at one point they thought that it was a Chinese burial because the report that the office received described an opium pipe; but when SHPD called the contract archaeologist, they said they had made that assumption.

Electric Beach, Kahe Point

On July 28, 2005, SHPD received a call from HPD. The officer said that six months ago, people from Lanikila Rehab went to Electric Beach to gather rocks for arts and crafts. While working on their craft projects, they came across a bone fragment. The bone fragment was determined as animal.

Kualoa Regional Park [TMK: (1) 4-9-004]

The City report to SHPD that a burial was found at Kualoa Regional Park. The call came in around 4:00 in the afternoon. At risk of being washed out, Chinen and Greer along with McQuivey, went to the site to assess the situation immediately. Carney instructed Chinen to pile more sand on the burials and she would go out the next day. When Carney went to the site, the tide was rising. So they were unable to recover the remains. Subsequently, Chinen, Greer, Greenwood, and Cathy Dagher went to the site and recovered the burial. What Chinen discovered at that site visit was that there is a temporary curation facility on site that one of the firms have been managing and that there are over 20 burials that have been collected over a decade that need to be reinterred.

Greer spoke to Pacific Legacy, who is contracted with the City and County. She will schedule a meeting with the firm to determine the inventory and visit the existing reinterment site. Then the descendants will be contacted for their guidance. There are 23 iwi kupuna that need to be reburied.

Ehrhorn added that there was another family in the area who were going to maintain the site.

Ehrhorn called a five-minute recess at 3:55 p.m. The meeting resumed at 4:00 p.m.

Stanley Koki Property [TMK: (1) 5-5-002-003-000]

When SHPD was called to this particular inadvertent discovery, the medical examiner made the determination that it was human remains, 50 years and older. The Police Dept. took the remains to the main station and Chinen picked up the remains.

Chinen added that this project did not go to SHPD for review. Chinen asked Mr. Koki to hire a contract archaeologist monitor to be on site during all excavation activity, which he agreed to do. Chinen also asked Mr. Koki to consider a relocation site on his property. Mr. Koki has agreed to set up a preserve on his property when the home is completed. Subsequently, Greer went to the site to retrieve additional remains that were later found.

Chinen added that burials were also found a few houses down from Mr. Koki's property near Pounder's Beach. SHPD staff have been going out to collect and monitor, but it was too dangerous to retrieve because the remains were in an eight-foot sand cliff (if the sand was to be touched, the wall would crumble). So some staff would go out and collect as the remains were coming out naturally. Sadly, at the last visit (about two weeks ago), the dune had collapsed. Chinen sent an archaeologist to sift through to see if any remains were present, but none were found.

In this case, Chinen has asked McQuivey to work with the landowner to see if they would be willing to allow SHPD to set up a preserve on site on their property. If not, Chinen intends to ask Mr. Koki if he will consider adding those remains to the preserve on his property.

John & Deborah Mullins Property [TMK: (1) 5-6-001:018]

This is the most recent burial call that had been responded to. Fragments of remains have been collected by the archaeological firm monitoring and a full burial was found August 8, to which SHPD responded. Initially SHPD determined preservation in place subject to reconsideration. SHPD has some questions about the fragments. Chinen is trying to determine to what extent the fragments were contained, was it likely that it came from a certain area; Chinen learned that fragments were found throughout the entire property. In fact, when the office went out as a follow up, SHPD staff were collecting remains (tiny fragments) that were still on the surface.

Chinen also learned that the contractor had disinterred the remains that were *in situ*. SHPD took those remains because it was a moot point to preserve in place since it was no longer in place. SHPD is working with the landowner and contractor to set a preserve on site. Initially, the contractor had agreed to the preserve and were willing to move the garage back. Since the remains were no

longer in the original burial place, Chinen suggested a preserve be created at the front end of the garage so that the remains will be cared for and visible. The contractor agreed to that and Chinen wrote a letter to the landowner to ask him for his written agreement to that plan to ensure that the owner has a voice in this issue.

VIII. ANNOUNCEMENTS

A. Wal-Mart Contested Case Decision & Order

Greer informed the Council that the Appeals Panel vacated and remanded the case back to the Oahu Island Burial Council for further consideration upon determination of ethnicity.

Kini wanted to clarify that the review panel nullified the Council's decision; Greer read the last page of the Decision and Order "...It is hereby ordered that the decision rendered at its meeting recognizing the Keana'aina family as known lineal descendants is vacated . . ." Greer added, "... this matter is remanded back to the OIBC for further consideration . . ."

B. Election of Chair & Vice-Chair

Ehrhorn shared with the Council that Diamond mentioned that he would like to have elections in October for a Chair and Vice-Chair. So Ehrhorn suggested to the Council to think about who they'd like to elect as their leaders for the coming year.

IX. ADJOURNMENT

A motion to adjourn was made. (Kini/Greenwood)

VOTE: ALL IN FAVOR.

Meeting adjourned at 4:24 p.m.

Submitted respectfully,

Susan Yanos
SHPD Secretary

Pursuant to §92-3, HRS, all interested persons shall be afforded an opportunity to present oral testimony or submit data, views, or arguments, in writing on any agenda item.

Pursuant to sections 92-4, 92-5(a)(8), and 6E-43.5, Hawaii Revised Statutes (HRS), and upon compliance with the procedures set forth in section 92-4, HRS, the council may go into a closed meeting to consider information that involves the location or description of a burial site.

A request to be placed on a burial council meeting agenda must be made with the Burial Sites Program staff at least two weeks preceding the scheduled meeting date. In addition, the request must be accompanied by all related documentation. Failure to comply with this procedure will delay the item to the following month's agenda.

Materials related to items on the agenda are available for review at the State Historic Preservation Division in room 555 of the Kakuhihewa Building located at 601 Kamokila Boulevard, Kapolei, Hawaii 96707, and will also be available at the meeting. Persons with disabilities requiring special assistance should contact the division in advance at (808) 692-8015.